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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 131 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MAHENDRA D PARMAR

Appearance:

1. INCOME TAX REFERENCE No. 131 of 1993
MR MIHIR H.JOSHI FOR MR MANISH R BHATT
for Applicant.
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal has referred

the following question for the opinion of this Court at the instance of the revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that only 50% of 8% of share from the firm of M/s.Kinariwala RJK Industries is to be included in the assessee's total income ?"

2 We have heard Mr.M.H.Joshi, learned Counsel for the revenue. In so far as respondent is concerned the notice is unserved. However, in view of the fact that the matter is being decided in favour of the assessee we have thought it fit to dispose of this reference which is pending since last eight years.

3 Mr.Joshi fairly points out that the question referred to us is concluded by the decision of this Court in case of Sunil J.Kinariwala vs. CIT, 211 ITR 127.

4 Following the said decision we hold that the Tribunal was right in law in holding that only 50% of 8% share from the firm was to be included in the assessee's total income. The question referred to us is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta,J)
m.m.bhatt